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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,273	11/10/2003	Brian J. Brown	S63.2N-6769-US03	4909
490 7590 08/16/2010 VIDAS, ARRETT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344				
EXAMINER				
BUL VY Q				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
08/16/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/705,273

**Applicant(s)**

BROWN ET AL.

**Examiner**

Vy Q. Bui

**Art Unit**

3773

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-70 is/are pending in the application.
- 4a) Of the above claim(s) 40, 41 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-39, 42-43, 45-46, 57-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

In view of the "Appeal Brief" filed on 4/9/2010, PROSECUTION IS HEREBY REOPENED.

The new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/(Jackie) Tan-Uyen T. Ho/

Supervisory Patent Examiner, Art Unit 3773

***Claim Objections***

Claim 46 is objected to because of the following informalities: the recitation "is formed is tantulum" (lines 1-2) is not correct. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Independent claim 38 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 38 (lines 14-15) recites "all connecting links that connect adjacent circumferential sets of strut members connected at a connected curved section". The specification does not support this limitation, which requires all connecting links connected at a connected curved section. Correction is required.

2. Independent claim 58 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 58 (lines 4 and 6) recite "peaks and troughs" (line 4), "peaks of a 1<sup>st</sup> amplitude and peaks of a 2<sup>nd</sup> amplitude" (lines 6-7). It is not clear what are the limits of the peaks, the limits of the troughs, the limits of 1<sup>st</sup> amplitude and the limits of 2<sup>nd</sup> amplitude. Clarification is required.

Claims 59-66 dependent to claim 58 are also rejected for the same reason.

3. Independent claim 67 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 67 (lines 8 and 9) recites "its". It is not clear what is represented by "its". Clarification is required.

***Claim Rejections - 35 USC § 102***

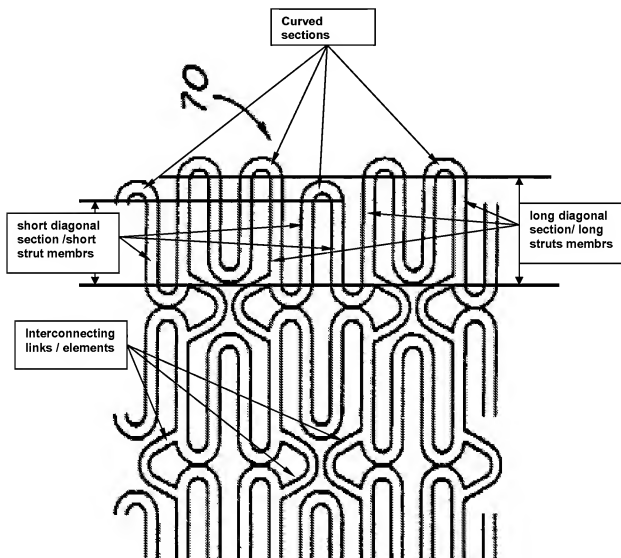
The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 38, 42, 45-46, 67-68, 70 are rejected under 35 U.S.C. 102(e) as being anticipated by Cox-6,461,380.

Cox-380 (F 3) discloses a stent 70 formed of a stainless steel or tantalum (C 5, L 34-42) comprising a multiplicity of circumferential sets of strut members, one end circumferential set of strut members at each of the two longitudinal ends of the stent, each interior circumferential set of strut members and each end circumferential set of strut members having a first end and a second end; each interior circumferential set of strut members including a plurality of strut members, connected curved sections, unconnected curved sections, each two adjacent strut members connected by a single curved section, the strut members including at least one connected strut member consisting of a long diagonal section having a longitudinal length fixedly attached to a connected curved section, each connected curved section being joined by means of a longitudinal connecting link to one connected curved section of an adjacent circumferential set of strut members, all connecting links that connect adjacent circumferential sets of strut members connected at all connected curved sections, the strut members also including at least one unconnected strut member consisting of a short diagonal section having a

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longitudinal length fixedly joined to an unconnected curved section, one interconnecting element at one end of one set of strut members connects to another interconnecting element of said set of strut members by three strut members substantially as recited in the claims.



***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cox-6,461,380 in view of Roubin-5,827,321.

As to claim 43, Cox-'380 discloses substantially all limitations of the claimed invention, except for five connecting links. It is well known to control the rigidity of a stent portion by increasing the number of connecting links between two adjacent circumferential sets of struts members. For example, Roubin et al.-5,827,321 (F 9-10; C 7, L 34 to C 7, L 9) teaches more links 49 in upper portion of stent 40 to provide more rigidity of that upper portion of the stent in comparison to the lower portion having less number of links, so that more support is provided for a blood vessel.

It would have been obvious to one of ordinary skill in the art to increase Cox-'380 stent to have 5 or more links instead of 4 links to provide more rigidity and more support of the stent for a blood vessel.

2. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cox-6,461,380 in view of Kanesaka et al-5,810,872.

As to claim 39, Cox-'380 discloses substantially all limitations of the claimed invention, except for a straight link. However, Kanesaka-872 (F 6-7; C 5: L 5-14) discloses a stent having wavy band connecting by substantially straight elements 24 to bend easily and provide flexibility for the stent in a curved blood vessel. It would be obvious to one of ordinary skill in the art to provide straight links to a Cox-'380 stent as straight links are well known links in the stent art.

3. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cox-6,461,380 in view of Roubin-5,827,321.

As to claim 57, it is well known to control the flexibility of a stent portion by reducing the number of connecting links between two adjacent circumferential sets of struts of Roubin-'321 members. For example, Roubin et al.-5,827,321 (F 4A, C 6, L 57-66; F 9) teaches omitting connecting members 48 or 49 to increase flexibility of the stent. It would have been obvious to one of ordinary skill in the art to reduce the number of connecting members in Cox-'380 stent to increase flexibility of the stent as taught by Roubin-'321.

4. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cox-6,461,380 in view of Kanesaka-5,810,872

As to claims 39 and 63, Cox-'380 discloses substantially all limitations of the claimed invention, except for a circumferential and longitudinally offset straight link. However, Kanesaka-872 discloses a stent as shown in Fig. 1 having wavy band connecting by circumferential and longitudinally offset substantially straight elements. It would be obvious to one of ordinary skill in the art to provide straight links to a Cox-'380 stent as circumferential and longitudinally offset straight links are well known links in the stent art.

### ***Response to Arguments***

Applicant's arguments with respect to all rejected claims have been considered but are moot in view of the new ground(s) of rejection.



***Conclusion***

The finality of the office action 11/3/2009 has been withdrawn. New grounds of rejection have been applied as set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/  
Primary Examiner, Art Unit 3773